THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 433 of 2004
Old F.A.F.O. No. 1119 of 1988

State of U.P. through Collector Dehradun.

… **Appellant.**

Versus

1. Smt. Rashidan, W/O Hamid, R/O Timli,
P.S. Sahaspur, district Dehradun (since deceased)
Represented through her L.Rs.,
1/2 Sri Alim S/O Hamid & Rashidan aged about 60 years,
1/3 Sri Ali Hasan, S/O Sri Hamid & Rashidan, aged 56 years,
1/4 Sri Jamil S/O Shri Yasin, aged 35 years, grandson of Smt. Rashidan.

… **Respondents**

Sri Nand Prasad, learned Standing Counsel for the appellants-State.
None appeared for the respondents despite service.

Date 07-06-2006.
P.C : Hon. B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(for short referred to as the Act)*** against the judgment and award dated 31-5-1988, passed by Workmen Compensation Commissioner Dehradun (***in short the commissioner***) in Suit No. 1 of 1987, Smt. Rashidan Vs. State of U.P., whereby the learned Commissioner awarded compensation of Rs. 20,000/- payable by the Forest Department-appellant as mentioned in the impugned order. Aggrieved, the State has come up in appeal.

At the outset, it may be noted that the claimant Smt. Rashidan died during the pendency of appeal and she was substituted by her legal heirs vide order of this Court dated 8-2-2006.

Relevant facts of the case are that Smt. Rashidan filed a claim petition under Section 3 of the Act before the learned Commissioner with the allegation that her husband, who was working as Telephone Warden Mate/workman under the employment of the Divisional Forest Officer Timli, Range Dehradun lost his life due to an accident during the course of his employment

on 2-12-1986 when he was working at the site. The deceased was said to be getting Rs. 400/- as his monthly wages. The claimant sent notice by registered asking for compensation from the department concerned, but to no avail. Therefore, the claim petition was filed for compensation of Rs. 24,494-40.

The opposite party-employer filed written statement and contested the proceedings asserting that the deceased workman was getting monthly wages @ Rs. 225/- as daily wager. Therefore, the department was not liable to pay compensation under the said Act. The learned Commissioner framed necessary issues in the case, recorded the evidence led by the parties and after hearing the parties, the learned Commissioner came to the conclusion that the workman-deceased lost his life due to an accident in the course of his employment, therefore, the claimant was entitled to get compensation from the employer. Ultimately, claim petition was allowed for compensation of Rs. 20,000/- as per provision of Section 4A of the Act.

At the outset, it may be mentioned that the appeal under Section 30 of the Act can only be entertained if any substantial question of law is involved in the appeal.

From the grounds taken in the memo of appeal, the only substantial question of law, which requires to be answered is whether the deceased is covered by the definition of ‘workman’ and died in the course of his employment as a result of accident?

From the side of claimants, Balwinder Singh P.W.1, who was Forester of the employer, was examined. This witness has testified that the deceased was working as daily wager and he died in the course of employment while falling down from the ladder. He also deposed on oath that the deceased was working continuously since July 1986 onwards. Smt. Rashidan in her statement stated that her husband Hamid Khan was getting Rs. 200/- per month. It was

also stated that no compensation was paid from the State Government or the Forest Department. On the other hand, the employer examined the then Deputy Ranger Timli Range, who also admitted that Hamid Khan was working as *Chaukidar* temporarily under his supervision and that Hamid Khan was in the employment since the year 1984 onwards in different plantations. From a close perusal of the entire evidence on record, it is amply clear that the deceased died due to injuries suffered by him in the course of his employment. It is clearly established from the evidence of the witnesses produced by the parties that the deceased was a workman under the employment of the Forest Department. The appellant miserably failed to lead any evidence to substantiate its contention that the deceased is not covered by the definition of "workman" rather it is established from the testimony of the own witness of the appellant that the deceased was in continuous employment since the year 1984 till his accidental death. I accordingly hold that the deceased was fully covered by the definition of the "workman" and the claimant was entitled for compensation owing to the accidental death of Hamid Khan in the course of his employment. The question is answered accordingly in favour of the claimants and against the appellant.

There is no force in the appeal preferred by the appellant-State. The learned Commissioner has not committed any illegality or perversity in this case. The impugned judgment and award does not suffer from any manifest error of law. The award dated 31-5-1988 is liable to be affirmed. The appeal lacks merit.

No other substantial questions of law is involved in this appeal.

The appeal is hereby dismissed. The impugned award dated 31-5-1988 is affirmed. No order as to costs.

The compensation amount deposited before the learned Workmen Compensation Commissioner Dehradun through Cheque No. D-475101 Dated 17-2-1989 be released in favour of the claimants.

(B.S. Verma, J.)

RCP